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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FILED

JAN 11 1995

FEDERAL

In The Matter Of Amendment  
of the Commission's Rules  
Regarding a Plan for Sharing the  
Costs of Microwave Migration

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WT-Docket No. 95-57  
RM-8643

To: The Commission

**REPLY COMMENTS  
OF  
DUKE POWER COMPANY**

Duke Power Company ("Duke") by its attorneys, in accordance with Section 1.405 of the Commission's Rules and Regulations, 47 C.F.R. Section 1.405, hereby submits its "Reply Comments" in the above captioned proceeding. Duke joins other incumbent licensee commentators in supporting the general objective of the Commission's plan by which spectrum migration activity would be coordinated through a migration coordination entity in order to facilitate system migrations. Duke believes that such an approach could help the multiple negotiating parties inherent in large -scale system migrations to reach agreements on a timely basis. However, like other incumbent licensees, Duke has certain reservations with regard to the proposed rule modifications as they would apply to the treatment of incumbent licensees.

**I. BACKGROUND AND PRELIMINARY STATEMENT**

1. Duke is one of the nations largest public utility companies. Duke serves approximately 1.8 million customers in a 22,000 square mile territory covering Central and Western North Carolina

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and Northwestern South Carolina. In order to efficiently serve its area with vital electric power resources and to ensure that the delivery of those power services is performed safely, Duke has constructed a major private telecommunications system.

2. Within Duke's system are, among other things, several 2 GHz point-to-point microwave facilities as well as an extensive wide-area private 800 MHz facility which employs more than 60 channels, over 50 base station and mobile relay facilities and more than 5,000 mobile units. Accordingly, Duke is vitally concerned with the Commission's current plans to migrate private licensees to other comparable spectrum in order to make way for new commercial licensees.

## **II. COMMENTS**

3. Upon review of the Commission's 2 GHz migration proposals as well as the Comments filed in this proceeding, Duke agrees with the position expressed by certain other parties representing large private system operators that the Commission's overall approach seeking to simplify multi-party spectrum negotiations has merit.<sup>1</sup> Duke already has entered into good faith negotiations with PCS licensees for migration from its numerous 2 GHz microwave links. Duke believes that these negotiations will be successfully concluded in the near future, to the extent that Duke will have migrated from practically all of its current 2 GHz assignments. However, Duke believes the

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<sup>1</sup> See generally: Comments of Association of American Railroads ("AAR"); Comments of Utilities Telecommunications Counsel ("UTC"); Comments of The American Petroleum Institute ("API").

Commission's proposals to establish cost-sharing rules and a migration coordinating entity could prove helpful in expediting migration activities.

4. Duke recognizes that the instant proceeding is aimed at modification of the Commission's rules with respect to 2 GHz migration only. Moreover, Duke understands that with regard to migration of 800 MHz private land mobile facilities, the Commission has now proposed to finalize transition rules and procedures following review of further public comment on 800 MHz system migration issues.<sup>2</sup> Nonetheless, in recent discussions between representatives of Duke and several of the Commission's senior staff members, it was noted that the Commission may propose that the migration policy adopted in this 2 GHz proceeding serve as the basic framework for all spectrum migrations planned for the future in a number of radio services. While Duke applauds the Commission's announcement in the 800 MHz proceeding that it will separately address 800 MHz system migration issues, Duke is convinced that the Commission should separately review and establish migration policies on a "service by service" basis, following review of public comment, because each service has unique characteristics. Duke seeks assurance that this approach will be employed. Otherwise, the Commission must initiate a separate rulemaking proceeding and provide adequate opportunity for public notice and comment if it wishes to establish a migration policy of general applicability.

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<sup>2</sup> See: News Release, PR Docket No. 93-144, GN Docket No. 93-252, PP Docket No. 93-253, FCC Report No. DC-\_\_\_\_, (December 15, 1995).

5. Moreover, Duke believes that migration policies for all services should contain certain minimum assurances with respect to incumbent licensees who may be compelled to vacate their often critical spectrum assignments. This is particularly important in the case of private non-commercial systems such as Duke's, where the subject system provides telecommunications services vital to the public well being and safety. Duke believes that any replacement spectrum offered to an incumbent should equal or exceed the vacated spectrum assignment(s) in terms of bandwidth, propagation characteristics, equipment availability and system integration capability. Additionally, all costs of migration must be reimbursed by the new licensee. Such compensation arrangements should cover numerous cost factors including, but not limited to, costs of equipment retuning, replacement equipment where necessary (including upgrades where required), engineering and legal consulting services, planning services, employee overtime for migration activities as well as quantifiable costs of any system "down time", employee overtime and potential loss of customer goodwill. Fundamental fairness as well as the public interest in the uninterrupted provision of crucial services now made possible by private telecommunications systems - including services vital to the public health and safety - compel the Commission to offer incumbents no less than these minimal relocation policy assurances.<sup>3</sup>

### **III. CONCLUSION**

7. Duke supports the Commission's migration plan insofar as it attempts to expedite complicated multiple party spectrum negotiations. However, the Commission must not lose sight

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<sup>3</sup> For a further description of Duke's position on 800 MHZ System Migration, see Duke's Supplemental Comments filed in Docket 95-101 on December 7, 1995.

of the valuable services provided to the public by private telecommunications systems. Accordingly the Commission should carefully review incumbent needs and continuing telecommunications requirements in each service before prescribing final migration rules for that service. Additionally, as a general principle of all migration plans, the Commission must ensure that displaced incumbents receive truly comparable spectrum replacement assignments, and fair compensation for the costs incurred in spectrum migration activity.

**WHEREFORE, THE PREMISES CONSIDERED,** Duke Power Company respectfully requests that the Commission adopt spectrum migration procedures in accordance with the methods described herein.

Respectfully Submitted,

**DUKE POWER COMPANY**

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January 11, 1996

## **CERTIFICATE OF SERVICE**

I, Vanessa N. Duffy, do hereby certify that I have, this 11th day of January, 1996, caused to be sent by hand delivery copies of the foregoing "Reply Comments of Duke Power Company" to the following:

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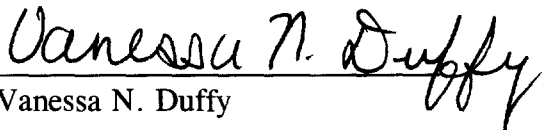
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